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OFFICE OF PETITIONS

In re Application of	:	
Joseph Florian	:	
Application No. 10/780,813	:	DECISION ON PETITION
Filed: February 17, 2004	:	UNDER 37 C.F.R. §§ 1.181(A)
Attorney Docket No.: 263.1	:	
Title: OPTICAL IN-VIVO	:	
MONITORING SYSTEMS	:	

This is a decision on the "notice of mailing under 37 CFR §1.8(b)," which is properly treated as a petition filed on January 22, 2007, pursuant to 37 C.F.R. § 1.181(a).

For future reference, Petitioner should consider clearly labeling such a submission as a petition under Rule §1.181, so that the filing may be properly routed to the Office of Petitions for consideration.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed May 12, 2004, which set a shortened statutory period for reply of two months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified

application became abandoned on July 13, 2004. A notice of abandonment was mailed on February 9, 2005.

RELEVANT PORTIONS OF THE C.F.R. AND M.P.E.P.

37 C.F.R. § 1.8(b) sets forth, in toto:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

M.P.E.P. § 503 sets forth, in pertinent part:

If a receipt for any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. To ensure the receipt of return receipt postcards, users must either: (A) purchase already stamped postcards from the United States Postal Service (USPS) or affix postage stamps to their postcards; or (B) if a postage meter is used, ensure that the meter postmark does not show the date. Any return receipt postcard containing a dated meter postmark may not be delivered by the USPS to the address provided on the postcard. >Users are reminded that they are solely responsible for placing the proper postage on self-addressed postcards that are submitted to the USPTO for the purpose of obtaining a receipt for correspondence being filed in the USPTO. Users should check with the USPS regarding postage and what size cards are acceptable to the USPS. Any return receipt postcard that does not contain sufficient postage or is not acceptable may not be delivered by the USPS to the address provided on the postcard, and, if returned to the USPTO, may be discarded.

The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

ANALYSIS

With the present petition, Petitioner has effectively alleged that the holding of abandonment should be withdrawn because a response to the notice was purportedly timely filed. Petitioner has not set forth on what date this response was purportedly submitted to the Office, but has indicated that a copy of the "mailing certificate" was enclosed with the present petition.

Petitioner has included a copy of a paper entitled "Missing Parts Response," along with a Fee Transmittal Sheet and a paper entitled "Deposit Account General Authorization." Each of these items is dated June 15, 2004, and neither appears to contain a certificate of mailing. Petitioner has further included a copy of a check in the amount of \$450 that is dated June 15, 2004.

It appears that Petitioner has attempted to assert that each of these items was submitted to the Office on June 15, 2004.

The electronic file has been reviewed, and the original papers have not been located. Furthermore, Office records do not indicate the receipt of \$450 on or about June 15, 2004. A copy of the "mailing certificate" has not been located either.

37 C.F.R. §1.8 and M.P.E.P. §503 set forth procedures which may be undertaken by applicants, in order to provide relief and secure the withdrawal of a holding of abandonment in situations where a communication is mailed to the Office and either not received or misplaced within the same.

Petitioner has included copies of the papers that were purportedly submitted to the Office on June 15, 2004, and neither appears to contain a certificate of mailing. Moreover, it does not appear that a postcard receipt has been provided with this petition.

It follows that the showing in the present petition is not sufficient to withdraw the holding of abandonment. Pursuant to the discussion above, the petition pursuant to 37 C.F.R. §1.181 must be DISMISSED.

Furthermore, it is noted that almost two years passed between the mailing of the notice of abandonment and the filing of the present petition.

It is not clear why the Applicant chose to take no course of action for such a long period of time. It does not appear that the Applicant took any action to further the prosecution of this application. It is equally unclear what, *after all of this time*, prompted the Applicant to advance the prosecution of this application. As such, it appears that Applicant intentionally

allowed this application to stay abandoned for such a long period of time. Any subsequent filing must address both Applicant's extended period of inaction as well as the decision to file this petition after two years had passed, and must include a statement of facts from one having firsthand knowledge of the facts set forth therein.

It is noted in passing that the copy of the check has been reviewed, and it does not appear to contain an identifier that would associate it with the present application, such as an application number or an attorney docket number.

CONCLUSION

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. § 1.181(a)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail¹, hand-delivery², or facsimile³. Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web⁴.

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Alternatively, Petitioner may wish to consider filing a petition under 37 C.F.R. §§1.137(a) and/or (b). Petitioner may download information about these petitions here:

http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c

Telephone inquiries regarding *this decision* should be directed

1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

2 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

3 (571) 273-8300- please note this is a central facsimile number.

4 <https://portal.uspto.gov/authenticate/authenticateuserlocalepf.html>

to the undersigned at (571) 272-3225⁵. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
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Office of Petitions
United States Patent and Trademark Office

⁵ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.